

CRIMINAL LAW UPDATES & HOT TOPICS

Education Conference 2016

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SOME JUVENILE SENTENCES IN ADULT COURT

Miller v. Alabama, ___ U.S. ___, 132 S.Ct. 2455 (2012)

Mandatory (i.e., non-discretionary) natural life sentences for persons under age 18 are unconstitutional

People v. Davis, 2014 IL 115595

Miller to be given retroactive application,
without regard to status on direct appeal or
collateral review

A PERFECT STORM

People v. Patterson, 2014 IL 115012.

Re-affirms constitutionality of automatic transfer
provisions of Juvenile Court Act for first degree
murder, agg criminal sexual assault, armed
robbery with a firearm, agg vehicular invasion
armed with a firearm, and agg battery with a
firearm, for 15, 16, and now 17-year olds

FIREARM ENHANCEMENTS

15 Years	Possession of a Firearm
20 Years	Personal Discharge of a Firearm
25 Years [?]	Personal Discharge, Proximately Caused Death, GBH, or Permanent Disability or Disfigurement

TRUTH IN SENTENCING

First Degree Murder 100%

Others (incl. Att. 1st Deg Murder) 85%

MANDATORY CONSECUTIVE SENTENCING

De Facto Life Sentences

SCENARIO 1

17-yr-old defendant, with older co-offender, enters apartment looking for drugs and money. Husband and wife at home. Older co-offender tells defendant to shoot the victims; defendant does so, killing the husband and causing "GBH" to wife.

Defendant had ADD-HD, mood disorder, bipolar disorder, depression, dropped out of high school, fifth or sixth grade reading level

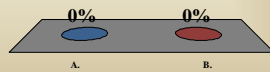
Min sentence- 45 for murder + 31 for att murder

Defendant received 50 + 40 (roughly 84 years with T.I.S.)

Sentences Upheld?

A. Yes

B. No



People v. Edwards, 2015 IL App (3d) 130190

SCENARIO 2

16-yr-old defendant, guilty of first degree murder, personal discharge, proximately caused death, and two counts of attempt first degree murder, personal discharge.

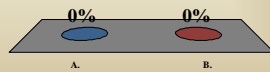
Sentenced to minimum consecutive sentences of
 $45 + 26 + 26$

Total 97 years (roughly 89 with T.I.S.)

Sentences Upheld?

A. Yes

B. No



People v. Reyes, 2015 IL App (2d) 120471

See also *People v. Joshua Cavazos* 2015 IL App (2d) 120171 (45 yrs for murder + 30 yrs for att. murder) and *People v. Justin Cavazos*, 2015 IL App (2d) 120444 (35 yrs + 25 yrs)

SCENARIO 3

15-yr-old defendant found guilty of two attempt 1st degree murders, personal discharge.

Mood disorder, mild mental retardation, HDD-AD.

Minimum sentence: 26 + 26 (roughly 44+ T.I.S.)

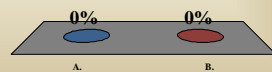
Sentence: 26 + 26

(N.B. Natural life sentences for juvenile for non-homicide charges unconstitutional. *Graham v. Florida*, 560 U.S. 48 (2010)).

Sentences Upheld?

A. Yes

B. No



People v. Gipson, 2015 IL App (1st) 122451

See also *People v. Brown*, 2015 IL App (1st) 130048

People v. Pace, 2015 IL App (1st) 110415
 16-yr-old defendant, 1st degree murder (personal discharge, prox cause of death), two counts agg battery w/ firearm.

Min sentence, $45 + 6 + 6 = 57$ (roughly 55 yrs T.I.S.)

On blind plea, sentences totaling 100 yrs vacated
 Proper range on remand?

H.B. 2471 eff. date 1-1-16

Amends various provisions of Code of Corrections

No nat. life for numerous offenses for juveniles

New Section 5/5-4.5-105 (b) Trial court has *discretion* to not impose firearm enhancements for juveniles

(c) 1st deg murder of police, fireman, corr. officer, EMT, CAPS by juvenile- 40 year minimum, not natural life

People v. Allen, 2013 IL App (1st) 102884-U

Can you see what I see?



People v. Lerma
Admissibility of Expert Eye Witness
Testimony

“Identification” case

Defense requests permission to call
“identification expert” who will testify
regarding potential fallibility of identification
testimony

Proposed testimony to highlight issues arising in:

Confidence \neq accuracy

Effect of stress and/or presence of weapon

Cross-racial identification problems

The “forgetting curve” and passage of time

Impact of partial disguises

Misconceptions of memory v. theory of memory

People v. Lerma, 2014 IL App (1st) 121880, PLA
granted, No. 118496 (argued 11-17-15)

Murder; night-time; gunshots; eyewitness knew
defendant as “Lucky”; decedent dying
declaration/excited utterance: “Lucky shot me”;
decedent and witness African-American and
defendant Hispanic

Suggested Approach:

The trial judge “must carefully scrutinize the proffered. . . testimony to determine. . . whether there is a logical connection between the testimony and the facts of the case.” *People v. Tisdale*, 338 Ill.App.3d 465 (1st Dist. 2003).

If the trial judge determines that the proffered testimony is probative and relevant, then the court should proceed to the second step: a balancing of the probative value against any possible confusion that the testimony could spawn. *People v. Enis*, 139 Ill. 264 (1990).

People v. House, 2015 IL App (1st) 133572-U

People v. Starks, 2014 IL App (1st) 121169

Dog Sniffs and Traffic Stops How long is too long?



SCENARIO 4

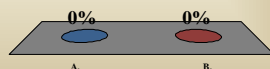
Sole officer, minor traffic violation, two occupants, warning issued

After warning, officer waited until 2nd officer arrived, then performed dog sniff 7-8 min later, resulting in recovery of drugs in car.

Do you grant motion to suppress?

Do you grant motion to suppress?

- A. Yes
- B. No



Rodriguez v. United States, ___ U.S. ___, 135 S.Ct. 1609 (2015)

SCENARIO 5

Minor traffic violation, driver w susp. license.
Driver/passenger conflicting stories about travel plans.

Driver became ill, refused ambulance.

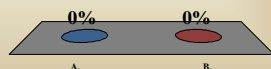
16 minutes later, dog "free air" sniff begun, resulting in recovery of drugs from vehicle.

Do you grant the motion to suppress?

Do you grant motion to suppress?

A. Yes

B. No



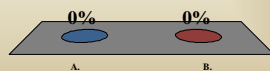
People v. Pulling, 2015 IL App (3d) 140516

SCENARIO 6

Minor traffic violation,
Two persons in vehicle, two officers at scene initially,
Driver and pass. names run,
Canine officer arrives, defendant then asked to get out of car, dog sniff and resultant recovery
Total time from stop to recovery- - 10 minutes

Do you grant motion to suppress?

- A. Yes
- B. No



People v. Reedy, 2015 IL App (3d) 130955

Good-faith exception to the exclusionary rule

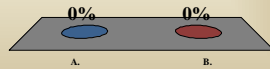


SCENARIO 7

Suspecting that defendant was involved in a rash of burglaries, police placed a GPS-like beeper on his car w/o a warrant. A later robbery was committed while defendant's car was nearby. Following his arrest, contraband was recovered and defendant confessed. After conviction, the US Supreme Court ruled that GPS devices placed on cars required a warrant. Result on this appeal?

Do you grant motion to suppress?

- A. Yes
- B. No



People v. LeFlore, 2015 IL 116799 In face of prior precedent permitting installation of beeper w/o warrant, officers' conduct was pursued in good faith, and did not warrant suppression

United States v. Davis, 131 S.Ct. 2419 (2011)

Good faith exception applies where search conducted in accordance with existing precedent, notwithstanding subsequent change in law

SCENARIO 8

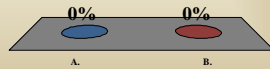
Prior to *Florida v. Jardines*, 133 S.Ct. 1409 (2013), police used a dog sniff inside apartment building, outside door to defendant's apartment in part as basis for search warrant of apartment resulting in recovery of drugs.

Do you grant the motion to suppress?

Do you grant motion to suppress?

A. Yes

B. No



People v. Brown, 2015 IL App (1st) 140093

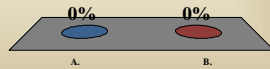
SCENARIO 9

Police observe defendant with a handgun protruding from his waistband. After he is arrested and gun is recovered, the police check database to see if defendant has an FOID card. Thereafter, *Aguilar* is decided, holding portion of AUUW statute unconstitutional. Do you grant the motion to suppress?

Do you grant motion to suppress?

A. Yes

B. No



People v. Holmes, 2015 IL App (1st) 141256

Cf. *People v. Colyar*, 2013 IL 111835

United States v. Charles, 801 F.3d 855 (7th Cir. 2015)

MORE JUVENILE STUFF

People v. Fiveash, 2015 IL 117669

23-yr-old charged in adult court with agg crim sex assault against 6-yr-old, from when the deft was 14 (or 15)

FITNESS ISSUES

People v. Stahl, 2015 IL 115804

Amnesia does not, *per se*, render a defendant unfit

People v. McCoy, 2014 IL App (2d) 130362

Deft request for jury at fitness trial prevails over
counsel's request for bench trial

People v. Cook, 2014 IL App (2d) 130545

Make a finding

LESSER INCLUDED OFFENSES

People v. Clark, 2014 IL App (1st) 123494, PLA
granted, No. 118845

Armed robbery/dangerous weapon is *not* a lesser
included offense of armed robbery/firearm

People v. Booker, 2015 IL App (1st) 131872

Home invasion/dangerous weapon is *not* a lesser
included offense of home invasion/firearm

JOINDER

People v. McGee, 2015 IL App (1st) 130367

People v. Moody, 2015 IL App (1st) 130071

OBSTRUCTING/RESISTING POLICE

People v. Shenault, 2014 IL App (2d) 130211
Continued refusal to exit vehicle after repeated demands by officer constituted offense of obstructing or resisting an officer

HUNTER AND FISHERMEN INTERFERENCE ACT

People v. Holm, 2014 IL App (3d) 130057
Actions in making noise and “alerting” potential game to presence of hunters did not violate Act where deft. was on land he rented.

LAST TIME WE WERE WRONG

Martinez v. Illinois, ___ U.S. ___, 134 S.Ct. 2070 (2014) “Sham” trials are not shams.

JURY QUESTIONS

When the jury during its deliberations asks you for a definition of reasonable doubt

People v. Downs, 2015 IL 117934. Here, the trial court responded: “We cannot give you a definition of reasonable doubt; it is your duty to define it.”

Krankel Hearings

People v. Washington, 2015 IL App (1st) 131023
Trial court erred in refusing to consider deft’s post-trial complaint about counsel because “not in writing”

People v. Jolly, 2014 IL 117142
At initial stage, do not let the prosecutor talk

CONTEMPT OF COURT

Refusal to Testify

People v. Geiger, 2015 IL App (3d) 130457
10-year sentence for refusal to testify in double murder case not excessive

See also *People v. Gonzalez*, 2014 IL App (2d) 120946 (10-year sentence for refusal to testify in murder trial not an abuse of discretion)

EVIDENCE OF OTHER CRIMES

People v. Stevens, 2014 IL 116300

Trial court properly compelled defendant to answer questions on cross-examination about alleged sexual assault introduced in State case, despite claim of fifth amendment right and even though charges in that case were pending

EVIDENCE OF OTHER CRIMES

People v. Baldwin, 2014 IL App (1st) 121725

Acquittal on charges relating to other crimes evidence does not prohibit its introduction in later case - proof of other crimes need not be beyond a reasonable doubt, but must be "more than a mere suspicion."

SECTION 115-10.1

People v. Simpson, 2015 IL 116512

"Personal knowledge" requirement for admission of prior, unsworn written statement means knowledge gleaned by witness's actual perception of event rather than something someone told witness.

Thank you. Please remember to fill out your session evaluation and return the Turning Point responder.
